



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,070	03/22/2004	Johannes Theodorus Maria Slingerland	VER-180XX	1513
207	7590	07/21/2006	EXAMINER	
WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109			NGUYEN, TRINH T	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/806,070

Applicant(s)

SLINGERLAND ET AL.

Examiner

Trinh T. Nguyen

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amendment dated 4/13/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 12, 15, 17-19 and 21-41 is/are pending in the application.
- 4a) Of the above claim(s) 23-26 and 31-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 12, 15, 17-19, 21, 22 and 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-6,12,15,17-19,21,22, and 27-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: the term “the inner box holder” is confusing since it is unclear as to what this “inner box holder” is referred to (i.e., “the first inner box holder” or a different inner box holder).

In claim 2: the phrase “a second inner box holder suitable to accommodate the inner box” is confusing since it is unclear if this “inner box” is the same or different “inner box” as claimed in claim 1; therefore, it is not clear what is being claimed; and the phrase “a portion of the inner box projects through an opening in one of the upper or lower sides of the second inner box holder” is confusing since it is unclear as to what the term “the inner box” defines and/or intends to be encompassed. Is this “inner box” the same or different “inner box” as claimed in claim 1?

In claim 5: the phrase “the direction of the bottom wall tapers slightly” is confusing since it is unclear as to what “the direction of the bottom wall” defines and/or implies.

In claims 17-19: the phrase “the inner box is detachably connectible with the first inner box holder” is confusing since as claimed in claim 1, the inner box is being “detachably coupled” and not “detachably connectible”.

Art Unit: 3644

In claim 29: the phrase "a circumferential projection on an end of the inner box which engages an edge of the second inner box holder when the portion of the inner box projects through the opening of the second inner box holder" is confusing since it is unclear if this "inner box" is the same or different "inner box" as claimed in claim 1; therefore, it is not clear what is being claimed.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6,12,15,17,18,21,22, and 30 (as best understood) are rejected under 35 U.S.C. 102(b) as being anticipated by JP2002-326630 (JP'630).

For claim 1, JP'630 discloses a flower box assembly comprising an inner box (12) and a first inner box holder (14), the inner box having a bottom wall and at least one closed sidewall, the first inner box holder having at least one sidewall and an open lower side and upper side, the inner box being detachably coupled with the inner box holder (Note that *The American Heritage Dictionary of the English Language, Fourth Edition* copyright © 2000 by Houghton Mifflin Company (on line version at Dictionary.com) defines the term "coupled" as "to link together; connect" or "something that joins or connects two things together; a link" or "to form pairs; join". Therefore, it is the Examiner's position to interpret that JP'630 does disclose the inner box being detachably coupled with the inner box holder).

Art Unit: 3644

For claim 2, JP'630 further discloses a second inner box holder (22) such that the first inner box holder being operable to support the second inner box holder when the second inner box holder rests on an upper side of the first inner box holder.

For claim 3, JP'630 further discloses that the first inner box holder differs from the second inner box holder.

For claims 4, 21 and 22, JP'630 further discloses that the sidewalls of the first and second inner box holders taper slightly towards each other.

For claim 5, JP'630 further discloses that at least one sidewall of the inner boxes tapers slightly.

For claim 6, JP'630 further discloses that in the at least one sidewall of the first inner box holders, at least one light passage opening.

For claims 12 and 15, JP'630 further discloses the second and first inner box holders with lower edges wherein the lower edges form cooperative engagement (i.e., toothed provision 22f,12b,52b) for stable stacking.

For claims 17 and 18, JP'630 further discloses the inner box is detachably connectible with the first inner box holder.

Regarding the intended use of the first and second box holders and the inner box as claimed in claims 1-6,12,15,17-19,21,22, and 27-30, it is noted that it is well settled case law that such limitations (for example only, "the inner box being detachably coupled with the inner box holder", "a second inner box holder suitable to accommodate the inner box...when the second inner box holder rests on an upper side of the first inner box holder", "the first inner box holder is nestable within another", "the inner boxes

Art Unit: 3644

is nestable within another”, “the inner box is detachably connectible with the first inner box holder when the first inner box holder is in a first position, and the inner box is also detachably connectible with the first inner box holder when the first inner box holder is in an inverted, second position”, “the first inner box holder extends substantially within the first inner box holder, and the inner box is said second position extends substantially outside of the first inner box holder”, “the inner box is placeable in the first inner box holder”, “a circumferential projection on an end of the inner box engages an edge of the second inner box holder when the portion of the inner box projects through the opening of the second inner box holder”, “a second inner box holder, which is inverted and placeable on an upper side of the inner box, or one the upper side of the first inner box holder, wherein the first inner box holder is placeable atop the second inner box holder”), which are essentially method limitations or statements or intended or desired use, do not serve to patentably distinguish the claimed structure over that of the reference. See In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 152 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647; and MPEP 2114 & 2115. MPEP 2114 which states: A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claims. Ex parte Masham, 2 USPQ2d 1647.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 19 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP2002-326630 (JP'630).

As described above, JP'630 discloses most of the claimed invention except for mentioning that the engaging force is greater than the weight of the first inner box holder. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made that whether the engaging force is greater than or less than or equal to the weight of the first inner box holder is a matter of design choice wherein no significant problem is solved or unexpected result obtained, and it appears that the invention would perform equally well with the engaging force such as one taught by JP'630.

7. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP2002-326630 (JP'630) in view of JP2003-170981 (JP'981; see Figure 7 attached at the end of this Office Action for further explanation).

As described above, JP'630 discloses most of the claimed invention except for mentioning a circumferential projection so as to engage two boxes together.

JP'981 teaches a box assembly similar at that of JP'630 wherein JP'981's box assembly having a circumferential projection so as to engage the two boxes (1,2)

Art Unit: 3644

together (see Figure 7 especially). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the box assembly of JP'630 so as to include the use of a circumferential projection, in a similar manner as taught in JP'981, since to do so would allow the two boxes to be engaged more securely and thus provide a more stable stacking manner.

Response to Arguments

8. Applicant's arguments filed 4/13/06 have been fully considered but they are not persuasive.

9. In response to Applicant's remarks on Election/Restrictions, Applicant is referred to paragraph #1 of the Office Action dated 1/13/06 for further explanation/support.

10. Applicant's arguments with respect to the references EP 1306319 and Ramsay et al. (US 5042674) have been considered but are moot in view of the new ground(s) of rejection.

11. In response to Applicant's arguments that JP'981 is completely silent as to a circumferential projection, Applicant is referred to Figure 7 of JP'981 attached at the end of this Office Action for further explanation.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3644

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M). The examiner's supervisor, Teri Luu can be reached on (571) 272-7045 for the purpose of status inquiry only. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/806,070

Art Unit: 3644

Page 9

A handwritten signature in black ink, appearing to read 'Trinh T. Nguyen', with a stylized flourish extending from the end.

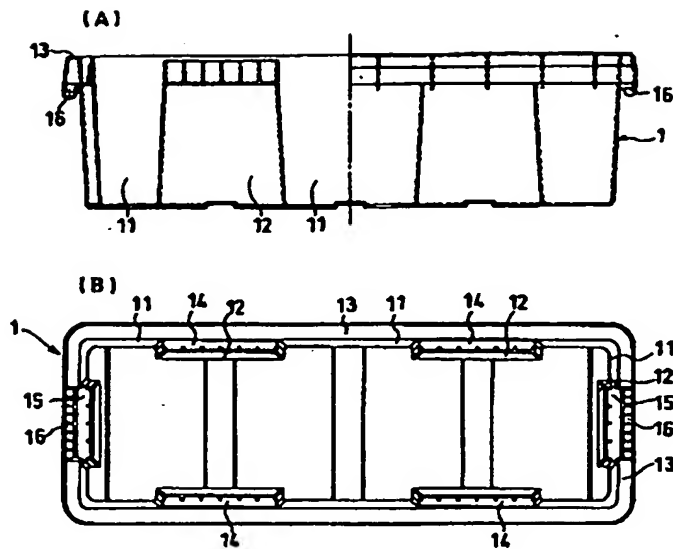
Trinh T. Nguyen
Primary Examiner
Art Unit 3644

6/20/06

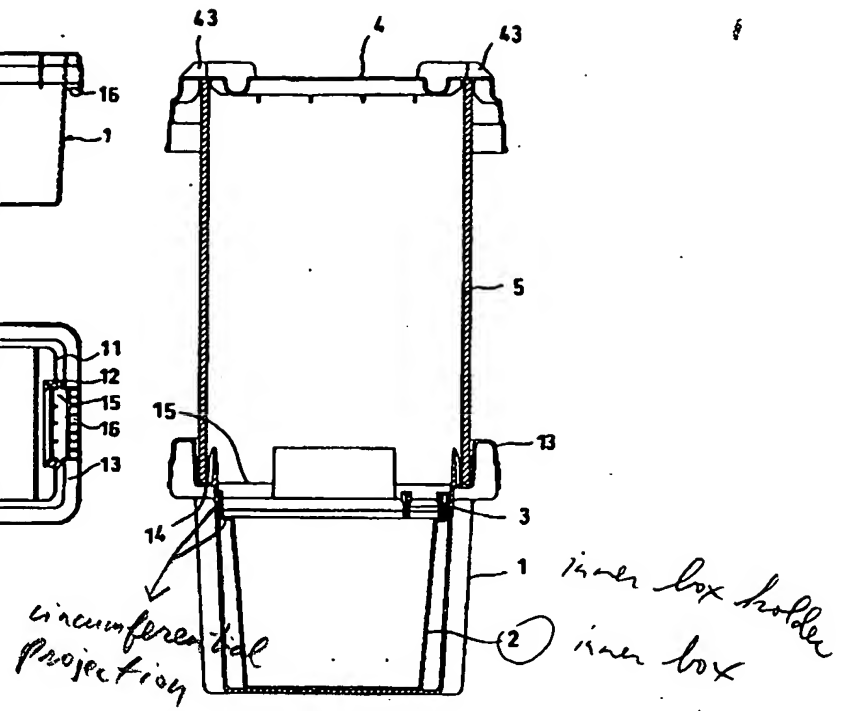
(7)

特開2003-170981

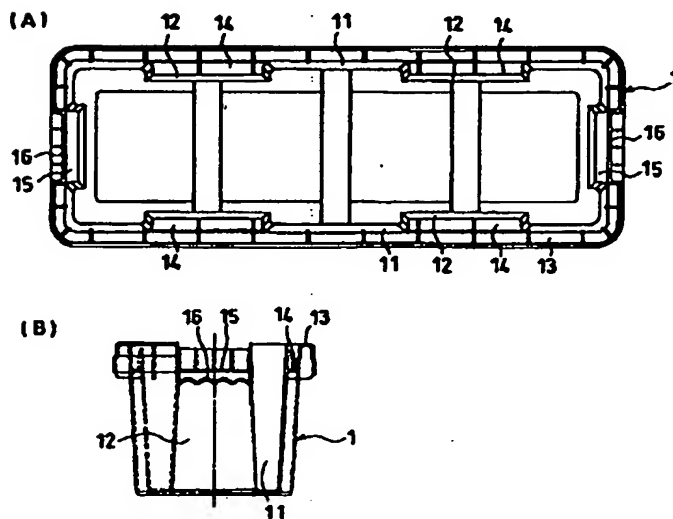
【図2】



【図7】



【図3】



Title: FLOWER BOX ASSEMBLY
Inventor Name: Johannes Theodorus
Maria Slingerland et al.
Appl. No. 10/806,070
Docket No.: VER-180XX
Replacement Sheet

1/12

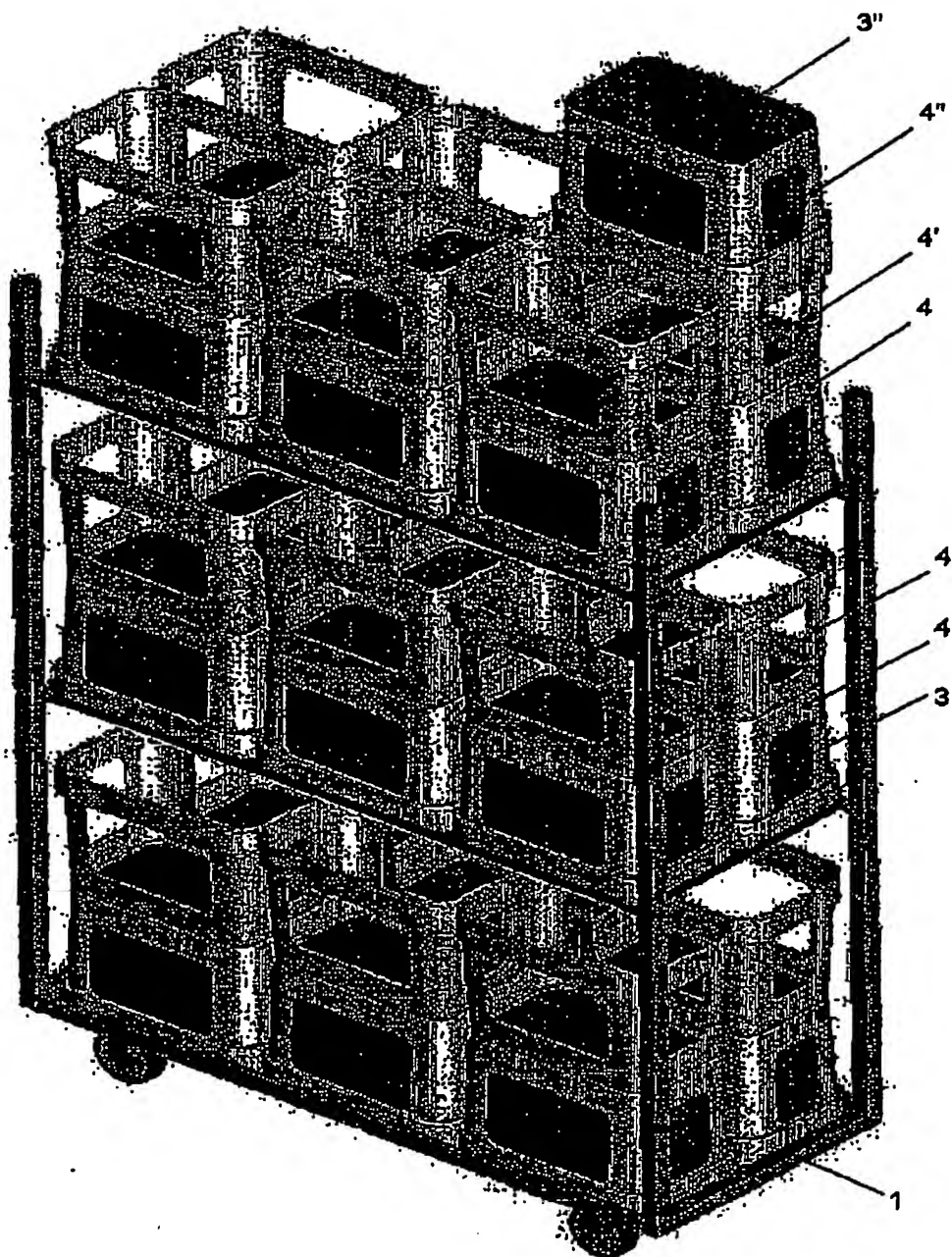


Fig. 1